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OFFICE OF PETITIONS

In re Application of :
Steen : DECISION ON APPLICATION
Application No. 10/072,404 : FOR PATENT TERM ADJUSTMENT
Filed: February 8, 2002 :
Atty. Dkt. No.: 19603/3810 (CRF :
D-2693) :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR § 1.705(b)" filed May 19, 2006.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **GRANTED TO THE EXTENT INDICATED HEREIN.**

The correct patent term adjustment (PTA) at the time of the allowance is 118 days. The Office will adjust the PAIR screen to reflect that the PTA determination at the time of mailing of the Notice of Allowance reflects an adjustment of 118 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application, mailed February 17, 2006, indicated that the PTA to date is zero days. The instant application for patent term adjustment was timely filed May 19, 2006. Applicant requests that the PTA be corrected from zero days to reflect an adjustment of 122 days.

A review of the application history reveals, as argued by applicant, that the Office errantly entered December 1, 2003 as the date that a response to the restriction requirement mailed March 18, 2003 was submitted, when, in fact, a response was timely submitted April 23, 2003. Accordingly, the reduction of 166 days has been corrected.

In view thereof, an adjustment of 108 days can be attributed to the Office in accordance with 37 CFR 1.702(a)(2) and 1.703(a)(2). The adjustment began August 24, 2003, the day after the date that is four months after the date that the response to the restriction

requirement was submitted, and ended December 9, 2003, the date non-final Office action was mailed.

A further adjustment of 137 days can be attributed to the Office in accordance with 37 CFR 1.702(a)(2) and 1.703(a)(2) in connection with the mailing of the final rejection on December 28, 2004. The adjustment began August 14, 2004, the day after the date that is four months after the date that the response to the non-final rejection was submitted, and ended December 28, 2004, the date the final rejection was mailed.

Accordingly, as of the time of allowance, an adjustment of 245 days can be attributed to the Office.

The adjustment of 245 days is properly reduced 127 days in accordance with 37 CFR 1.704.

The adjustment of 245 days is properly reduced 35 days in accordance with 37 CFR 1.704(b) in connection with the response to the non-final rejection mailed December 9, 2003. The reduction began March 10, 2004, the day after the date that is three months after the date that the non-final rejection was mailed, and ended April 13, 2004, the date a response was received.

Applicant argues that the response to the non-final rejection bore a certificate of mailing date of April 9, 2004 in accordance with 37 CFR 1.8. Applicant further argues that as a result of the certificate of mailing, the reduction in connection with the response to the non-final rejection should total 31 days rather than 35 days.

Applicant is reminded that the date indicated on any certificate of mailing or transmission under 1.8 shall not be taken into account in the calculation of PTA. See 37 CFR 1.704(f).

The adjustment of 245 days is further reduced 92 days in accordance with 37 CFR 1.704(b) in connection with the response to the final rejection mailed December 28, 2004. The reduction began March 29, 2005, the day after the date that is three months after the date that the final rejection was mailed, and ended June 28, 2005, the date the response thereto was submitted.

In view thereof, at the time of allowance, the instant application was entitled to an overall adjustment of 118 days.

The patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to 37 CFR §§ 1.702(a)(4) and 1.702(b).

Receipt is hereby acknowledged of the re required Patent Term Adjustment application fee of \$200.00.

The application file is being forwarded to the Office of Patent Publication for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Kery A. Fries
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Senior Legal Advisor
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Office of Deputy Commissioner
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CR. ADJUSTED P.M.2 CALCULATION